## BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

E. DIANE AKIN Claimant	)
VS.	) ) ) Docket No. 209 709
BAGCRAFT CORPORATION OF AMERICA Respondent	) Docket No. 208,798
AND	<b>,</b>
ROYAL INSURANCE COMPANY OF AMERICA Insurance Carrier	) ) )

## <u>ORDER</u>

The respondent and its insurance carrier requested review of the preliminary hearing Order entered by Administrative Law Judge Steven J. Howard dated May 28, 1996.

## **I**SSUES

The Administrative Law Judge granted claimant's request for medical benefits. The respondent and its insurance carrier contend claimant failed to prove she sustained personal injury by accident arising out of and in the course of her employment with the respondent and, likewise, failed to prove she provided timely notice of accident. In her brief, claimant asserts that the transcript of claimant's deposition taken on March 21, 1996 may not be considered as evidence for preliminary hearing purposes.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, for preliminary hearing purposes the Appeals Board finds:

The preliminary hearing Order entered by the Administrative Law Judge should be affirmed.

(1) Claimant's argument that her March 21, 1996 discovery deposition may not be considered for preliminary hearing purposes is totally without merit. Page 5 of the preliminary hearing transcript dated May 22, 1996 records the following exchange:

"THE COURT: The record should further indicate that the parties have submitted the deposition of the claimant, discovery deposition, to be considered for purposes of today's hearing. Correct, gentlemen?"

"MR. STUBBS: Yes, Judge."

"MR. PHALEN: Yes, for preliminary hearing purposes only."

- The Appeals Board agrees with the Administrative Law Judge and also finds it is more probably true than not true that claimant sustained personal injury by accident arising out of and in the course of her employment with the respondent during the period of December 4, 1995 through December 7, 1995, as alleged. Claimant testified her back began to hurt on or about December 4, 1995 when she straightened her back after stooping to perform her work. She also testified her back pain increased after December 4, 1995 and worsened to the point she was unable to work after December 7, 1995. After her symptoms did not improve, claimant sought medical treatment and asked respondent to provide a company doctor.
- The Appeals Board agrees with the Administrative Law Judge that claimant provided timely notice of accident. Claimant testified that she told her supervisor, Lisa Butts, on the day her back pain began that she hurt her back while working. Claimant's fiancé, Kevin L. Sharbutt, also testified that he discussed claimant's back injury with her supervisor on or about December 12, 1995 and that Ms. Butts acknowledged notice of accident in that conversation. Jeff Redden, claimant's fiancé's cousin, testified that he heard claimant tell Ms. Butts that she had hurt her back while working. It appears that conversation occurred either on December 4 or 5, 1995.

The Administrative Law Judge had the opportunity to observe claimant and her witnesses testify, along with respondent's witnesses Lisa Butts and Mary Ann Little. In awarding benefits, the Administrative Law Judge had to have found claimant to be truthful. In this instance, the Appeals Board gives some deference to the Administrative Law Judge's assessment of claimant's credibility and veracity.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge Steven J. Howard dated May 28, 1996 should be, and hereby is, affirmed.

IT IS SO ORDI	ERED.	
Dated this	_ day of July 1996.	
	BOARD MEMBER	

William L. Phalen, Pittsburg, KS C: Clifford K. Stubbs, Lenexa, KS Steven J. Howard, Administrative Law Judge

Philip S. Harness, Director